

Office of the Secretary of Defense

§ 290.3

officer in carrying out the duties stated in § 287.4 (d) and (h).

(b) *DTIC FOIA Officer.* The DTIC FOIA Officer, located at 8725 John J. Kingman Road, Suite 0944, Ft. Belvoir, VA 22060, is vested with the authority, within DTIC, to release documentation for all requests of records within DTIC, as stated in § 287.4 (a), (b), and (c) and assist the DISA FOIA officer in carrying out the duties stated in § 287.4 (d) and (h).

§ 287.7 Fees.

Fees charged to the requester are contained in 32 CFR part 286.

§ 287.8 Appeal rights.

All appeals should be addressed to the Director, DISA, and be postmarked no later than 60 days after the date of the initial denial letter.

§ 287.9 Reports.

An annual report will be furnished to the FOIA Officer by the field activities by 15 October IAW 32 CFR part 286.

§ 287.10 Questions.

Questions on both the substance and procedures of the FOIA and the DISA implementation thereof should be addressed to the FOIA Officer by the most expeditious means possible, including telephone calls, faxes, and electronic mail. FOIA requests should be addressed as follows: Defense Information Systems Agency, 701 S. Court-house Road, Arlington, VA 22204-2199, Attn: RGC. Calls should be made to (703) 607-6515. Faxed requests should be addressed to the FOIA Officer at (703) 607-4344. Electronic mail requests should be addressed to bergerr@ncr.disa.mil.

§ 287.11 "For Official Use Only" Records.

The designation "For Official Use Only" will be applied to documents and other material only as authorized by 32 CFR part 286 and DoD 5200.1-R.¹

¹Copies may be obtained via Internet at <http://web7.whs.osd.mil/corres.htm>

PART 290—DEFENSE CONTRACT AUDIT AGENCY (DCAA) FREEDOM OF INFORMATION ACT PROGRAM

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APPENDIX D TO PART 290—AUDIT WORKING PAPERS

AUTHORITY: 5 U.S.C. 552.

SOURCE: 56 FR 49685, Oct. 1, 1991, unless otherwise noted.

§ 290.1 Purpose.

This part assigns responsibilities and establishes policies and procedures for a uniform DCAA Freedom of Information Act (FOIA) program pursuant to the provisions of the Freedom of Information Act, 5 U.S.C. 552, as implemented by DoD Directive 5400.7¹ and DoD 5400.7-R.²

§ 290.2 Cancellation.

DCAA Regulation 5410.8, DCAA Freedom of Information Act (FOIA) Program, dated 17 May 1989; DCAAR 5200.1, Control and Protection of "For Official Use Only" Information, dated 12 November 1985; and DCAA HQ Instruction 5200.9, Physical Security of "For Official Use Only" Information within Headquarters, DCAA, dated 20 November 1974, are superseded.

§ 290.3 Applicability and scope.

This rule applies to all DCAA organizational elements, and is to govern written responses by DCAA officials for requests from members of the public for permission to examine, or to be provided with copies of DCAA records.

¹Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

²See footnote 1 to § 290.1.

§ 290.4

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This rule also addresses Agency policies and procedures for handling “For Official Use Only” information, including Field Detachment sensitive information.

§ 290.4 Policy.

Agency policy and procedures are those cited in DoD 5400.7-R. In addition, DCAA will:

(a) Promote public trust by making the maximum amount of information available to the public, upon request, pertaining to the operation and activities of the Agency.

(b) Allow a requester to obtain records from the Agency that are available through other public information services without invoking the FOIA.

(c) Make available, under the procedures established by DCAAP 5410.14,³ those records that are requested by a member of the general public who cites the FOIA.

(d) Answer promptly all other requests for information and records under established procedures and practices.

[56 FR 49685, Oct. 1, 1991, as amended at 60 FR 35699, July 11, 1995; 64 FR 1130, Jan. 8, 1999]

§ 290.5 Definitions.

The terms used in this rule with the exception of the following are defined in DCAAP 5410.14.

(a) *Initial denial authorities (IDAs)*. The regional directors, and the Chief, Administrative Management Division, have been delegated the authority by the Director, DCAA, to make initial determinations as to the releasability of DCAA records to the public, including Defense contractors. This authority may not be redelegated.

(b) *Appellate authority*. The Assistant Director, Resources, or his designee.

(c) *Electronic data*. Electronic data are those records and information which are created, stored, and retrievable by electronic means. This does not include computer software, which is the tool by which to create, store, or retrieve electronic data.

³Copies may be obtained from the Defense Contract Audit Agency, Attn: CMO, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060-6219.

(d) *FOIA request*. A written request for DCAA records, made by any person, including a member of the public (U.S. or foreign citizen), an organization, or a business, but not including a Federal agency or a fugitive from the law that either explicitly or implicitly invokes the FOIA, DoD 5400.7-R, DCAAR 5410.8,⁴ or regional instruction on the FOIA.

(e) *Administrative appeal*. A request by a member of the general public, made under the FOIA, asking the appellate authority to reverse an IDA decision to withhold all or part of a requested record or to deny a request for waiver or reduction of fees.

[56 FR 49685, Oct. 1, 1991, as amended at 64 FR 1130, Jan. 8, 1999]

§ 290.6 Responsibilities.

(a) *Headquarters*. (1) The Assistant Director, Resources is responsible for:

(i) The overall Agency-wide administration of the DCAA FOIA Program through the Chief, Administrative Management Division, Information and Privacy Advisor, to ensure compliance with the policies and procedures that govern the program.

(ii) Acting as the designee for the Director, DCAA, serving as the sole appellate authority for appeals to decisions of respective IDAs.

(iii) Advising the Assistant Secretary of Defense (Public Affairs) (ASD(PA)) of cases of public interest, particularly those on appeal, when the issues raised are unusual or precedent setting, matters of disagreement among DoD components, are of concern to agencies outside the Department of Defense, or may otherwise require special attention or guidance.

(iv) Advising the ASD(PA) and the Executive Officer, DCAA, concurrent with the denial of a request or an appeal, when circumstances suggest a news media interest.

(v) Conferring with the General Counsel; the Assistant Director, Operations; and the Assistant Director, Policy and Plans, on the desirability of reconsidering a final decision to deny a record, if that decision becomes a matter of special concern because it involves either an issue of public concern or DoD-wide consequences.

⁴See footnote 3 to § 290.4(c).

(vi) Accomplishing program overview, in cooperation with the General Counsel, to ensure coordinated guidance to components, and to provide the means of assessing the overall conduct of the Agency's FOIA Program.

(vii) Responding to corrective action recommended by the Special Counsel of the Merit Systems Protection Board for arbitrary or capricious withholding of records by designated employees of the Agency.

(2) The Chief, Administrative Management Division (CM) is responsible for:

(i) Establishing, issuing, and updating policies for the DCAA FOIA Program; monitoring compliance with this rule; and providing policy guidance for the FOIA program.

(ii) Resolving conflicts that may arise regarding implementation of DCAA FOIA policy.

(iii) Designating an Agency FOIA Advisor, as a single point of contact, to coordinate on matters concerning Freedom of Information Act policy.

(3) The DCAA Information and Privacy Advisor, under the supervision and guidance of the Chief, Administrative Management Division is responsible for:

(i) Managing the DCAA FOIA Program in accordance with this rule, DCAAP 5410.14, applicable DCAA policies as well as DoD and Federal regulations.

(ii) Providing guidelines for managing, administering, and implementing the DCAA FOIA program. This would include issuing the DCAA FOIA rule, developing and conducting training for those individuals who implement the FOIA, and publishing in the FEDERAL REGISTER any instructions necessary for the administration of the FOIA program. This also includes serving as the informational point of contact for regional FOIA coordinators.

(iii) Maintaining and publishing DCAA Pamphlet 5410.14, "DCAA Freedom of Information Act Processing Guide".

(iv) Preparing the Annual Freedom of Information Report to Congress as required by DoD 5400.7-R.

(v) Establishing and maintaining a control system for assigning FOIA case

numbers to FOIA requests received by Headquarters and regional offices.

(vi) Maintaining a record of FOIA requests received by Headquarters. This record is to contain the requester's identification, the date of the request, type of information requested, and type of information furnished. This record will be maintained and disposed of in accordance with DCAA records maintenance and disposition regulations and schedules.

(vii) Making available for public inspection and copying in an appropriate facility or facilities, in accordance with rules published in the FEDERAL REGISTER the records specified in paragraph (a)(2) of 5 U.S.C. 552, unless such records are published and copies are offered for sale. Maintain and make available for public inspection and copying current indices of these records.

(4) Heads of Principal Staff Elements are responsible for:

(i) Reviewing all regulations or other policy and guidance issuances for which they are the proponent to ensure consistency with the provisions of this rule.

(ii) Ensuring that the provisions of DCAAP 5410.14 and this rule are followed in processing requests for records.

(iii) Forwarding to the DCAA Information and Privacy Advisor, any FOIA requests received directly from a member of the public so that the request may be administratively controlled and processed.

(iv) Ensuring the prompt review of all FOIA requests, and when required, coordinating those requests with other organizational elements.

(v) Providing recommendations regarding the releasability of DCAA records to members of the public, along with the responsive documents.

(vi) Providing the appropriate documents, along with a written justification for any denial, in whole or in part, of a request for records. Those portions to be excised should be bracketed in red pencil, and the specific exemption or exemptions cited which provide the basis for denying the requested records.

(vii) Ensuring that documents are marked FOUO at the time of their creation if information contained within is considered exempt from disclosure.

(5) The General Counsel is responsible for:

(i) Ensuring uniformity is maintained in the legal position, and the interpretation of the Freedom of Information Act, DoD 5400.7-R, and this rule.

(ii) Consulting with General Counsel, DoD on final denials that are inconsistent with decisions of other DoD components, involving issues not previously resolved, or raise new or significant legal issues of potential significance to other Government agencies.

(iii) Providing advice and assistance to the Assistant Director, Resources; Regional Directors; and the Regional FOIA Coordinators, through the DCAA Information and Privacy Advisor, as required, in the discharge of their responsibilities.

(iv) Coordinating Freedom of Information Act litigation with the Department of Justice.

(v) Coordinating on Headquarters denials of initial requests and administrative appeals.

(vi) Ensuring that documents are marked FOUO at the time of their creation if information contained within is considered exempt from disclosure.

(6) The Executive Officer shall serve as the coordinator for the release of information to the news media.

(b) Each Regional Director is responsible for the overall management of the Freedom of Information Act program within his respective region. Under his direction, the Regional Resources Manager is responsible for the management and staff supervision of the program and for designating a regional FOIA Coordinator.

(1) Regional Directors are responsible for:

(i) Implementing and administering the Freedom of Information Act program throughout the region.

(ii) Making the initial determination pertaining to the releasability of DCAA records to members of the public. This authority cannot be delegated.

(iii) Delegating signature authority for FOIA correspondence which is con-

sidered only to be routine in nature, e.g., referrals and the release of information.

(iv) Ensuring that documents are marked FOUO at the time of their creation if information contained within is considered exempt from disclosure.

(2) FOIA Coordinators are responsible for:

(i) Issuing regional instructions that are consistent with the policies and procedures defined in DCAAP 5410.14 and this rule.

(ii) Conducting training on the FOIA program to the FAOs.

(iii) Submitting a DCAA Form 5410-4, "Freedom of Information Case Summary", to the DCAA Information and Privacy Advisor at the completion of each FOIA case to facilitate the preparation of the annual FOIA report to Congress. All case summaries must be submitted no later than October 10th for cases completed during the previous fiscal year.

(iv) Establishing and maintaining a control system to ensure proper accountability and processing of FOIA requests.

(v) Contacting the DCAA Information and Privacy Act Advisor for a FOIA case number upon receipt of a FOIA request.

(c) Managers, Field Audit Offices (FAOs) are responsible for:

(1) Overall management and administration of the FOIA program within organizations under their cognizance.

(2) Ensuring that the regional FOIA Coordinator promptly receives all incoming FOIA requests. Use of facsimile transmission is appropriate for all requests received directly by the FAO.

(3) Ensuring that documents are marked FOUO at the time of their creation if information contained within is considered exempt from disclosure.

[56 FR 49685, Oct. 1, 1991, as amended at 64 FR 1130, Jan. 8, 1999]

§ 290.7 Procedures.

(a) Procedures for processing material in accordance with the FOIA are outlined in DCAAP 5410.14. General provisions are outlined in the following paragraphs.

(b) *Requests for audit reports.* Audit reports prepared by DCAA are the property of and are prepared for the use of

DoD contracting officers. As a result, their release should be at the sole discretion of the DoD contracting activity. Requesters seeking audit reports should send their requests directly to the DoD contracting activity to avoid administrative delay. Typically, requests for copies of DCAA audit reports may be identified by requesting those that relate to a specific contract number (e.g. DLA600-89-P0222). DoD contract numbers may be easily matched to the cognizant DoD contracting activity by referring to 48 CFR, "DoD FAR Supplement" Appendix G.

NOTE: Although DCAA can make a release determination on audit reports produced for non-DoD agencies, administrative procedure routinely dictates coordination with that agency prior to responding to the request. Requesters seeking expeditious processing should forward their requests directly to the cognizant contracting officer for processing.

(c) *Requests for audit working papers.* Audit working papers, as described in appendix D, may be sought occasionally in conjunction with an audit report or as an independent demand. Normally, the release of such records is entirely dependent on the releasability of the related audit report. (Note: The procedures for determining the releasability of audit reports is provided in general in the aforementioned paragraph and in more detail in DCAAP 5410.14). Since the content of audit working paper files can be quite diverse and often voluminous, FOIA Coordinators should work closely with the requester to ensure that the records produced are narrowly defined and entirely responsive to the requester's needs.

(d) *Public inspection and copying.* Section (a)(2) of the Freedom of Information Act requires agencies to make available for public inspection and copying, final opinions made in the adjudication of cases, statements of policy not yet published in the FEDERAL REGISTER, and administrative manuals and instructions. This requirement is satisfied by the publication of DCAAI 5025.2,⁵ "DCAA Index of Publications" and DCAAI 5025.13,⁶ "Index of DCAA Memorandums for Regional Directors".

⁵ See footnote 3 to § 290.4(c).

⁶ See footnote 3 to § 290.4(c).

(e) *Requests for the examination or copies of records.* (1) Members of the public may make written requests for copies of DCAA records or for permission to examine such records during normal business hours. Such requests must be in writing and either explicitly or implicitly invoke the Freedom of Information Act, or this rule. These requests should be submitted directly to the appropriate DCAA organizational element listed in appendix B of this rule. If the appropriate DCAA organizational element is either unknown or cannot be ascertained, and the record is likely to be in the possession of DCAA, the request may be submitted to Defense Contract Audit Agency, Attn: CM, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060-6219.

(2) When submitting requests, requesters should:

(i) Identify each record sought with sufficient detail to facilitate the location and easy access to the record requested. Information as to where the record originated, subject, date, number, or any other identifying particulars should be provided whenever possible. DCAA organizational elements receiving requests which do not reasonably describe the record requested will advise the requester accordingly. Generally, a record is not reasonably described unless the requester provides information permitting an organized, nonrandom search of DCAA files and/or information systems. In providing descriptions based on events, the requester must provide information which permits DCAA organizational elements to, at least, infer the specific record sought.

(ii) Identify all other Federal agencies subject to the provisions of the FOIA to which the request has been sent. This will reduce both processing and coordination time between agencies and redundant referrals.

(iii) Provide a statement of their willingness to pay assessable charges. The statement must include a specific monetary amount if the assessable fees are likely to exceed the fee waiver threshold of \$15.00 or a specific justification for any waiver or reduction of fees sought based on public interest

in release or disclosure. DCAA organizational elements will notify requesters of deficiencies in fee declarations, and provide them the opportunity to amend initial declarations. Determinations on the adequacy of requester fee declarations are not subject to appeal unless: The DCAA organizational element has denied a specific request for the assessment of fees under one of the established requester categories; or has denied a request for the waiver or reduction of fees in the public interest.

(3) When a DCAA organizational element has no records responsive to a request, the requester will be notified promptly that should he or she determine such request to be adverse in nature, he or she may exercise their appeal rights. In cases where the request has been misdirected and the DCAA organizational element is aware of the appropriate FOIA respondent, they shall refer the request to the appropriate DCAA organizational element or other Federal agency through FOIA channels, and notify the requester of the referral. The 20 working day period allowed for responding to requests will not begin until the DCAA organizational element having the responsive records receives a request complying with procedural requirements of this rule, including statements on the payment of fees.

(4) The provisions of the FOIA are intended for parties with private interests. Officials seeking documents or information on behalf of foreign governments, other Federal agencies, and state or local agencies should be encouraged to employ official channels. The release of records to individuals under the FOIA is a public release of information. DCAA organizational elements will consider FOIA requests from such officials as made in a private, rather than official capacity, and will make disclosure and fee determinations accordingly.

(f) *Referrals.* (1) Records originating in or based on information obtained from other Federal agencies subject to the FOIA may be referred to that agency. In processing FOIA requests for such records, DCAA elements, after coordinating with the originating agency, may refer the request, along with a copy of the responsive records in its

possession, to that agency for direct response. The requester is to be notified of the referral. However, if for investigative or intelligence purposes, the outside agency desires anonymity, FOIA Coordinators may only respond directly to the requester after coordination with the agency.

(2) Referral of audit reports. Audit reports prepared by DCAA are the property of and are prepared for the use of the DoD contracting officers. Their release is at the discretion of the DoD contracting activity. Therefore any FOIA request for audit reports prepared for DoD components should be referred to the cognizant DoD contracting activity and the requester notified of the referral. To avoid the delay associated with the referral process, requesters should be advised to send requests for audit reports directly to the cognizant DoD contracting activity. Requests for audit reports prepared for non-DoD agencies should be treated as requests for DCAA records.

(3) Referral of work papers. When a requester seeks workpapers, the cognizant contracting officer must furnish a notice of disposition to the appropriate activity pertaining to the releasability of the audit report. The notice of disposition will then be used to determine releasability of the workpapers. Details concerning the appropriate processing procedures may be found in DCAAP 5410.14.

(4) All other requests should be directed to the appropriate Regional Director, if known. When the location of the record is not known, the request should be directed to the DCAA Information and Privacy Advisor.

(5) Time limits. DCAA organizational elements are to respond promptly to requesters complying with the procedural requirements outlined in this rule. When a significant number of requests are being processed, e.g. 10 or more, the requests shall be completed in order of receipt. However, this does not preclude completing action on a request which can be easily answered, regardless of its ranking within the order of receipt. Action may be expedited on a request regardless of its ranking within the order of receipt upon a showing of exceptional need or urgency. Exceptional need or urgency is

determined at the discretion of the FOIA Coordinator.

(i) Upon receipt of a properly submitted FOIA request, DCAA organizational elements should contact the DCAA Information and Privacy Advisor for a FOIA case number. IDAs should:

(A) Locate and assemble responsive records.

(B) Determine releasability under the provisions of this rule.

(C) Determine the appropriate fees to be charged and

(D) Advise the requester accordingly. Initial determinations on either the release or denial of records, and notice to requesters, must be provided within 20 working days following receipt of the request by the cognizant DCAA organizational element.

(ii) In certain cases, IDAs may need to exercise an extension to the normal 20 working day period cited above. IDAs are to notify the requester, within the initial 20 working day period, of the extension, the circumstances necessitating it, and the anticipated date of a determination. Approved extensions are not to exceed 10 working days, and all extensions should be indicated on DCAA Form 5410-4, section 6. Circumstances where such extensions may be approved include:

(A) The record(s) sought are geographically located at places other than the DC+AA organizational element processing the request.

(B) The request requires the collection and review of a substantial number of records.

(C) The disclosure determination requires consultation with another DCAA organizational element or other Federal agency with a substantial interest.

(iii) As an alternative to the previously mentioned, DCAA organizational elements may seek informal agreements with requesters for extensions in unusual circumstances when time limits become an issue in the response to the request.

(iv) Misdirected requests should be referred within 20 working days to the proper Federal agency or DCAA organizational element through FOIA channels, and the requester notified of the referral. The 20 working day period al-

lowed for responding to requests will not begin until the DCAA organizational element having the responsive records receives the request.

(6) Initial disclosure determinations.

(i) Initial determinations to make records available may only be made by those IDAs designated in this rule.

NOTE: Requests for audit reports should be directed to the cognizant contracting officer for release determination. (See § 290.7(b)).

When a decision is made to release records in response to a FOIA request, DCAA organizational elements will promptly make the records available to the requester. When the request is for the examination of releasable records, DCAA organizational elements will advise the requester when and where he/she may appear. Examinations will be held during normal business hours. If a record is not provided in response to a FOIA request, the IDA will advise the requester, in writing, of the rationale for not providing the record.

(ii) IDAs should consult the Executive Officer, prior to releasing records on matters considered newsworthy or when releasing records to media representatives. Copies of all media requests should be submitted to the Executive Officer.

(iii) The following reasons, other than the statutory exemptions cited in the FOIA, are provided for not releasing a record in response to a FOIA request.

(A) The request is transferred to another DoD component, or to another Federal agency.

(B) The Agency determines through knowledge of its files and reasonable search efforts that it neither controls nor otherwise possesses the requested record.

(C) A record has not been described with sufficient particularity to enable the Agency to locate it by conducting a reasonable search.

(D) The requester has failed unreasonably to comply with procedural requirements, including payment of fees, imposed by this rule.

(E) The request is withdrawn by the requester.

(F) The information requested is not a record within the meaning of the FOIA and this rule.

(7) Denials. (i) A record in the possession and control of DCAA may be withheld *only* when the record falls within one or more of the nine categories of records exempt from mandatory disclosure under the FOIA, and the use of discretionary authority to release the record is determined to be unwarranted. (Note: Since audit reports are prepared for the use of DoD contracting officers, their release is at the discretion of the DoD contracting activity. To facilitate an expeditious response, requesters should send their requests directly to the DoD contracting activity. (See §290.7(b)). The specific exemptions are detailed in DCAAP 5410.14.

(ii) Although exempt portions of records may be denied, nonexempt portions must be released to the requester when it can reasonably be assumed that the excised information could not be reconstructed. When a record is denied in whole, based on distortion or reconstruction potential, the IDA will prepare a response advising the requester of the determination, and the response will specifically state that it is not possible to reasonably segregate meaningful portions for release.

(iii) When a request for a record is denied in whole or in part, the IDA will inform the requester in writing of the specific exemption(s) on which the denial is based and explain the determination in sufficient detail to permit the requester to make a decision concerning appeal. The determination will also inform the requester of his/her appeal rights. All appeals should be made within 60 calendar days from the date of the initial denial, contain the reasons for the requester's disagreement with the determination, and be addressed to the Assistant Director, Resources, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060-6219.

(iv) Records or portions of records which have been previously released become part of the public domain, and cannot be denied thereafter.

(8) Administrative Appeals of Denials. (i) If the IDA declines to provide a record because he/she considers it exempt, that decision may be appealed by the requester, in writing, to the Assistant Director, Resources, DCAA.

NOTE: Normally, IDAs would not issue denials for requests for audit reports. The denial authority for such records generally rests with the cognizant DoD contracting activity. (See §290.7(b)). The appeal should be accompanied by a copy of the letter denying the initial request. Such appeals should contain the basis for disagreement with the initial refusal. Appeal procedures also apply to the disapproval of a request for waiver or reduction of fees. A "no record" finding may be appealed which allows the requester to challenge the adequacy of the Agency's search. Records which are denied should be retained during the time permitted for appeal.

(ii) IDAs shall advise the requester that an appeal should be filed so that it reaches the designated appellate authority no later than 60 calendar days after the date of the initial denial letter. At the conclusion of this period, except for good cause shown as to why the appeal was not timely, the case may be considered closed; however, such closure does not preclude the requester from filing litigation for denial of his appeal. If the requester has been provided a series of determinations for a single request, the time for appeal will begin on the date of the last determination of the series. Records which are denied shall be retained for a period of six years to meet the statute of limitations of claims requirement.

(iii) Final determinations normally shall be made within 20 working days of receipt of an appropriately submitted appeal.

(9) Delay in responding to an appeal. (i) When additional time is required to respond to the appeal, the final determination may be delayed for the number of working days (not to exceed 10 days) that were not utilized as additional time for responding to the initial request. Requesters shall be advised that, if the delay exceeds the statutory extension provision or is for reasons other than the unusual circumstances previously described, they may consider their administrative remedies exhausted. They may, however, without prejudicing their right of judicial remedy, await a substantive response. DCAA shall continue to process the case expeditiously, whether or not the requester seeks a court order for release of the records, but a copy of any response provided subsequent to filing a complaint shall be forwarded to

the Department of Justice through the DCAA General Counsel.

(ii) When the Assistant Director, Resources, DCAA, makes a determination to release all or a portion of the records on appeal, the records shall be made available promptly to the requester after compliance with procedural requirements. The final denial of a request will be made in writing, explain the exemption(s) invoked, advise that the material being denied does not contain meaningful portions that are reasonably segregable, and also advise the requester of the right of judicial review.

(10) Judicial action. A requester will be deemed to have exhausted his administrative remedies after he has been denied the requested record by the Assistant Director, Resources, or when the Agency fails to respond to his request within the time limits prescribed by the FOIA and this rule. The requester may then seek an order from a U.S. District Court in the district in which he resides or has his principal place of business; the district in which the record is situated; or in the U.S. District Court for the District of Columbia, enjoining the Agency from withholding the record and ordering its production.

[56 FR 49685, Oct. 1, 1991, as amended at 56 FR 56932, Nov. 7, 1991; 57 FR 15254, Apr. 27, 1992; 60 FR 35699, July 11, 1995; 64 FR 1131, Jan. 8, 1999]

§ 290.8 Fees.

(a) Fees shall be determined in accordance with the DoD fee schedule, which is detailed in DCAAP 5410.14. Fees reflect direct costs for search, review (in the case of commercial requesters), and duplication of documents, collection of which is permitted by the FOIA. Fees are subject to limitations on the nature of assessable fees based on the category of the requester; statutory and automatic waivers based on the category determination and cost of routine collection; and either the waiver or reduction of fees when disclosure serves the public interest.

(b) Fees will not be charged when direct costs for a FOIA request are \$15.00 or less, the automatic fee waiver threshold, regardless of category.

(c) *Fee assessment.* In order to be as responsive as possible to FOIA requests, DCAA organizational elements should adhere to the following when assessing fees:

(1) Evaluate each request to determine the requester category and adequacy of the fee declaration. An adequate fee declaration requires a willingness by the requester to pay fees in an amount equal to, or greater than, the assessable charges for the request.

(2) Provide requesters an opportunity to amend inadequate fee declarations and provide estimates of prospective charges when required. When a requester fails to provide an adequate fee declaration within 30 days after notification of a deficiency, the request for information will be considered withdrawn.

(3) A requester's claims for assessment of fees under a specific category will be carefully considered. The IDA may require a requester to substantiate a claim for assessment under a claimed category. In the absence of requester claims, the IDA will determine the category into which a requester falls, basing its determination on all available information.

(4) When a DCAA organizational element disagrees with a requester claim for fee assessment under a specific category, the IDA will provide the requester with written determination indicating the following:

(i) The requester should furnish additional justification to warrant the category claimed.

(ii) A search for responsive records will not be initiated until agreement has been attained relative to the category of the requester.

(iii) If further category information has not been received within a reasonable period of time, the component will render a final category determination; and

(iv) The determination may be appealed to the Assistant Director, Resources, within 60 calendar days of the date of the determination.

(d) When a DCAA organizational element estimates or determines that allowable charges that a requester may be required to pay are likely to exceed \$250.00, they shall notify the requester

of the likely cost and obtain satisfactory assurance of full payment. This fee declaration generally applies when the requester has a history of prompt payments, however, an advance payment may be required of an amount up to the full estimated charges in the case of requesters with no history of payment.

(e) Where a requester has previously failed to pay a fee charged within 30 calendar days from the date of billing, DCAA organizational elements may require the requester to pay the full amount due, plus any applicable interest or demonstrate satisfaction of the debt, and to make an advance payment of the full amount of estimated fees, before processing begins on a new or pending request.

(f) After all work is completed on a request, and the documents are ready for release, DCAA organizational elements may request payment before forwarding the documents if there is no payment history on the requester, or if the requester has previously failed to pay a fee in a timely fashion (i.e., within 30 calendar days from the date of billing). Documents may not be held for release pending payment from requesters with a history of prompt payment.

(g) The administrative time limits for responding to a request will begin only after the DCAA organizational element has received an adequate declaration from the requester stating a willingness to pay fees, and satisfaction that all outstanding debts have been paid.

(h) DCAA organizational elements can bill requesters for services provided in responding to a request. Payment of fees may be made by personal check, bank draft drawn on a U.S. bank, or by U.S. Postal money order. All payments of this type are to be made payable to the U.S. Treasurer.

(i) *Aggregating requests.* Occasionally, a requester may file multiple requests at the same time, each seeking portions of a document or documents, solely to avoid payments of fees. When a DCAA organizational element reasonably believes that a requester is attempting to do so, the DCAA organizational element may aggregate such requests and charge accordingly. One ele-

ment to be considered would be the time period in which the requests have occurred. In no case may DCAA organizational elements aggregate multiple requests on unrelated subjects from one requester.

(j) *Fee waivers.* (1) The determination to waive fees is at the discretion of IDAs designated in this rule. When direct costs for a FOIA request total the automatic fee waiver threshold, or is less, fees shall be waived automatically for all requesters, regardless of category.

(2) Documents will be furnished without charge, or at a charge reduced below fees assessed to the categories of requesters, when the IDA determines that a waiver or reduction of fees is in the public interest because furnishing the information is likely to contribute significantly to public understanding of the operations of DCAA, and is not primarily in the commercial interest of the requester. DCAA organizational elements should refer to DCAAP 5410.14 for factors to consider in applying fee waivers due to public interest. Each fee decision must be considered on a case-by-case basis and upon the merits of the information provided in each request. When the question of whether to charge or waive the fee cannot be clearly resolved, DCAA organizational elements should rule in favor of the requester.

APPENDIX A TO PART 290—DCAA'S ORGANIZATION AND MISSION

(a) Purpose. This section implements 5 U.S.C. 552 by describing the central and field organizations of DCAA.

(b) Origin and Authority. DCAA was established by the Secretary of Defense under Department of Defense (DoD) Directive 5105.36¹ (32 CFR part 357) and began operating on July 1, 1965. Its Director reports to the Comptroller of the Department of Defense.

(c) Objective. Assist in achieving the objective of prudent contracting by providing DoD officials responsible for procurement and contract administration with financial information and advice on proposed or existing contracts and contractors, as appropriate.

(d) Mission. (1) DCAA performs all necessary contract audits for the Department of

¹Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

Defense, and provides accounting and financial advisory service regarding contracts to all DoD components responsible for procurement and contract administration. These services are provided in connection with negotiation, administration, and settlement of contracts and subcontracts. It also furnishes advisory contract audit service to a number of other government agencies under agreements between the Department of Defense and such agencies.

(2) DCAA audits contractors' and sub-contractors' accounts, records, documents, and other evidence; systems of internal control, accounting, costing, estimating, and general business practices and procedures to give advice and recommendations to procurement and contract administration personnel on: acceptability of costs incurred under cost, redetermination, incentive, and similar type contracts; acceptability of estimates of costs to be incurred as represented by contractors incident to the award, negotiation, and modification of contracts; and adequacy of contractors' accounting and financial management systems and estimating procedures. DCAA also performs post-award audits of contracts for compliance with the provisions of Public Law 87-653 (Truth in Negotiations), and reviews contractor compliance with the Cost Accounting Standards.

(3) DCAA assists responsible procurement or contract administration activities in their surveys of the purchasing-procurement systems of major contractors; and cooperates with other DoD components on reviews, audits, analyses, or inquiries involving contractors' financial positions or financial and accounting policies, procedures, or practices. DCAA also maintains liaison auditors at major procuring and contract administration offices and provides assistance in the development of procurement policies and regulations.

(e) Composition. (1) DCAA consists of five major organizational elements: A Headquarters and five regions. The five regional offices manage over 400 field audit offices (FAOs) and suboffices located throughout the United States and overseas. An FAO is identified as either a branch office or a resident office. Suboffices are established by regional directors as extensions of FAOs when required to furnish contract audit service more economically. A suboffice is dependent on its parent FAO for release of audit reports and other administrative support.

(2) The Headquarters located at Fort Belvoir, Virginia consists of:

(i) The Director who exercises worldwide direction and control of DCAA.

(ii) The Deputy Director who serves as principal assistant to the Director and acts for the Director in his absence.

(iii) The Assistant Director, Operations, authorized to act for the Director and Deputy Director in their absence, is responsible

for staff functions related to audit management, and technical audit programs, supervises the Defense Contract Audit Institute and the Technical Services Center in Memphis, Tennessee and the procurement/contract administration liaison offices.

(iv) The Assistant Director, Policy and Plans, is responsible for audit policy and procedures and related liaison functions.

(v) The Assistant Director, Resources, is responsible for the programs and procedures related to the management and administration of resources required to support the audit mission.

(vi) The General Counsel provides legal and legislative advice to the Director and all members of the Agency staff.

(vii) The Executive Officer performs a variety of special projects and assignments for the Director and Deputy Director.

(viii) The Special Assistant for Quality reviews the Agency's compliance with established audit quality control standards, policies, and procedures and other internal control requirements.

(3) Regional offices are located in Smyrna, GA; Lowell, MA; Irving, TX; La Mirada, CA; and Philadelphia, PA. Regional directors direct and administer the DCAA audit mission, and manage personnel and other resources assigned to the regions; manage the contract audit program; and direct the operation of FAOs within their region. Principal elements of regional offices are the Regional Director, Deputy Regional Director, Regional Audit Managers, Regional Special Programs Manager, and Regional Resources Manager.

(4) A resident office is established at a contractor's location when the amount of audit workload justifies the assignment of a permanent staff of auditors and support staff. A resident office may also perform procurement or contract administration liaison functions.

(5) A branch office is established at a strategically situated location within the region, responsible for performing all contract audit service within the assigned geographical area, exclusive of contract audit service performed by a resident or liaison office within the area. A branch office may also perform procurement or contract administration liaison functions.

(6) If requested, a DCAA liaison office is established at a DoD procurement or contract administration office when required on a full-time basis to provide effective communication and coordination among procurement, contract administration, and contract audit elements. Liaison offices assist in effective utilization of contract audit services.

[56 FR 49685, Oct. 1, 1991, as amended at 60 FR 35699, July 11, 1995; 64 FR 1131, Jan. 8, 1999]

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**APPENDIX B TO PART 290—DCAA’S FOIA
POINTS OF CONTACT**

(Regional Offices Listed Alphabetically by
State and City)

CALIFORNIA

DCAA WESTERN REGIONAL OFFICE, Attn: RCI-4 (FOIA Coordinator), 16700 Valley View Avenue, Suite 300, La Mirada, CA 90638-5830, (714) 228-7083

Geographical Area of Responsibility: Alaska, California, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington.

Pacific Ocean and Asian Islands.

Asia except the Middle East.

Australia.

GEORGIA

DCAA EASTERN REGIONAL OFFICE, Attn: RCI-1 (FOIA Coordinator), 2400 Lake Park Drive, Suite 300, Smyrna, GA 30080-7644, (770) 319-4510

Geographical Area of Responsibility: Alabama, Florida, Georgia, Indiana, Kentucky, Louisiana, Mississippi, North Carolina, Ohio, Tennessee, Virginia, West Virginia, Central America, South America, Bermuda, Puerto Rico and nearby Islands, and Mexico.

MASSACHUSETTS

DCAA NORTHEASTERN REGIONAL OFFICE, Attn: RCI-2 (FOIA Coordinator), 59 Composite Way, Suite 300, Lowell, MA 01851-5150, (978) 551-9722

Geographical Area of Responsibility: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, Michigan (excluding the Upper Peninsula), all New York Counties except Steuben, Schuyler, Chemung, Tompkins, Tioga, Broome, Chenango, Otsego, Delaware, and Sullivan.

Africa and Adjacent Islands.

Europe and Adjacent Islands.

Middle East and Adjacent Islands.

Greenland.

Iceland.

PENNSYLVANIA

DCAA MID-ATLANTIC REGIONAL OFFICE, Attn: RCI-6 (FOIA Coordinator), 615 Chestnut Street, Suite 1000, Philadelphia, PA 19106-4498, (215) 597-5403

Geographical Area of Responsibility: Delaware, District of Columbia, Maryland, and New Jersey.

New York Counties of Steuben, Schuyler, Chemung, Tompkins, Tioga, Broome, Chenango, Otsego, Delaware, and Sullivan. The IBM Suboffice located at Tarrytown, New York.

Pennsylvania Counties East of and including Tioga, Lycoming, Union, Mifflin, Juniata, and Franklin.

Virginia Counties East and North of and including Stafford, Culpeper, Rappahannock, Page, Shenandoah, and Frederick.

TEXAS

DCAA CENTRAL REGIONAL OFFICE, Attn: RCI-3 (FOIA Coordinator), 106 Decker Court, Suite 300, Irving, TX 75062-2795, (214) 650-4893

Geographical Area of Responsibility: Arizona, Arkansas, Colorado, Illinois, Iowa, Kansas, Minnesota, Missouri, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, Wisconsin, Wyoming and Louisiana Parishes North of and including Vernon, Rapides, and Avoyelles.

VIRGINIA

DCAA HEADQUARTERS, Attn: CM (Information and Privacy Advisor), 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060-6219, (703) 767-1000

(a) Miscellaneous.

(1) The following publications may be obtained from the Defense Contract Audit Agency, ATTN: CMO, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060-6219, (703) 767-1066. Many of these items, among others, may be obtained from the DCAA Web site. Since these materials are publicly available, requesters need not invoke the Freedom of Information Act to obtain copies of the publications selected.

(i) DCAAI 5025.2, Index of Numbered Publications, lists Agency publications.

(ii) DCAAP 1421.3, Catalog of Training Courses, lists training courses available from the Defense Contract Audit Institute. Specific training courses are also available.

(2) Although the following publication is publicly available, the memorandums listed may or may not be subject to withholding under the Freedom of Information Act. Those memorandums marked with an “(R)”, denoting releasable (e.g. 94-PFD-063R), are available from the above address. However, Memorandums for Regional Directors (MRDs) marked “(NR)”, meaning not releasable, cannot be obtained from this source. Requests for (NR) MRDs should be sought under the auspices of the Freedom of Information Act from the Defense Contract Audit Agency, ATTN: CM, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060-6219.

(i) DCAAI 5025.13, Index of DCAA Memorandums for Regional Directors (MRDs), lists numbered memorandums pertaining to Agency policy, procedure, and informational topics.

(3) Requesters should plainly display the words “Freedom of Information Act Request” on the lower left hand corner of the envelope to ensure prompt handling.

(b) [Reserved]

[56 FR 49685, Oct. 1, 1991, as amended at 57 FR 30904, July 13, 1992; 58 FR 63084, Nov. 30, 1993; 60 FR 18006, Apr. 10, 1995; 60 FR 35699, July 11, 1995; 61 FR 4885, Feb. 9, 1996; 61 FR 5510, Feb. 13, 1996; 64 FR 1131, Jan. 8, 1999]

APPENDIX C TO PART 290—FOR OFFICIAL USE ONLY

(a) General. Information that has not been given a security classification pursuant to the criteria of an Executive Order, but which may be withheld from the public for one or more of the reasons cited in FOIA Exemptions 2 through 9 shall be considered as being for official use only. No other material shall be considered or marked "For Official Use Only" (FOUO). FOUO is not authorized as an anemic form of classification to protect national security interests.

(b) Prior FOUO Application. The prior application of FOUO markings is not a conclusive basis for withholding a record that is requested under the FOIA. When such a record is requested, the information in it shall be evaluated to determine whether, under current circumstances, FOIA exemptions apply in withholding the record or portions of it. If any exemption or exemptions apply or applies, it may nonetheless be released when it is determined that no governmental interest will be jeopardized by its release. (1) Historical Papers. Records such as notes, working papers, and drafts retained as historical evidence of Agency actions enjoy no special status apart from the exemptions under the FOIA.

(2) Time to Mark Records. The marking of records at the time of their creation provides notice of FOUO content and facilitates review when a record is requested under the FOIA. Records requested under the FOIA that do not bear such markings, shall not be assumed to be releasable without examination for the presence of information that requires continued protection and qualifies as exempt from public release.

(3) Distribution Statement. Information in a technical document that requires a distribution statement pursuant to DoD Directive 5230.24¹ shall bear that statement and may be marked FOUO, as appropriate.

(c) Markings. (1) Location of Markings. (i) An unclassified document containing FOUO information shall be marked "For Official Use Only" at the bottom on the outside of the front cover (if any), on each page containing FOUO information, and on the outside of the back cover (if any).

(ii) Within a classified document, an individual page that contains both FOUO and

classified information shall be marked at the top and bottom with the highest security classification of information appearing on the page.

(iii) Within a classified document, an individual page that contains FOUO information but no classified information shall be marked "For Official Use Only" at the bottom of the page.

(iv) Other records, such as, photographs, films, tapes, or slides, shall be marked "For Official Use only" or "FOUO" in a manner that ensures that a recipient or viewer is aware of the status of the information therein.

(v) FOUO material transmitted outside the Department of Defense requires application of an expanded marking to explain the significance of the FOUO marking. This may be accomplished by typing or stamping the following statement on the record prior to transfer:

This document contains information
EXEMPT FROM MANDATORY DISCLOSURE

Under the FOIA, Exemptions apply.

(2) Instructions for marking DCAA audit reports are contained in Chapter 10 of the Contract Audit Manual (CAM)².

(3) DCAA Label 4, FOUO Cover Sheet. This form may be used to further identify FOUO information.

(d) Dissemination and Transmission. (1) Release and Transmission Procedures. Until FOUO status is terminated, the release and transmission instructions that follow apply:

(i) FOUO information may be disseminated within the Agency and between officials of DoD Components and DoD contractors, consultants, and grantees to conduct official business for the Department of Defense. Recipients shall be made aware of the status of such information, and transmission shall be by means that preclude unauthorized public disclosure. Transmittal documents shall call attention to the presence of FOUO attachments.

(ii) Agency and DoD holders of FOUO information are authorized to convey such information to officials in other departments and agencies of the executive and judicial branches to fulfill a government function, except to the extent prohibited by the Privacy Act. Records thus transmitted shall be marked "For Official Use Only", and the recipient shall be advised that the information has been exempted from public disclosure, pursuant to the FOIA, and that special handling instructions do or do not apply.

¹Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

²Copies may be obtained from the Defense Contract Audit Agency, Attn: CMO, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060-6219.

(iii) Release of FOUO information to Members of Congress is governed by DoD Directive 5400.4³ Release to the GAO is governed by DoD Directive 7650.1⁴ Records released to the Congress or GAO should be reviewed to determine whether the information warrants FOUO status. If not, prior FOUO markings shall be removed or effaced. If withholding criteria are met, the records shall be marked FOUO and the recipient provided an explanation for such exemption and marking. Alternatively, the recipient may be requested, without marking the record, to protect against its public disclosure for reasons that are explained.

(iv) Records or documents containing FOUO information will be transported between offices in such a manner as to preclude disclosure of the contents. First-class mail and ordinary parcel post may be used for transmission of FOUO information. The double envelope system required for classified material may be used when it is considered desirable to exclude examination by mail handling personnel. In such cases, the inner envelope should be addressed to the intended recipient by title or name and contain a statement that the envelope is to be opened by the addressee only.

(v) FOUO material prepared on personal computers or other data processing equipment should be password protected at origination.

(vi) Requests for Field Detachment sensitive information must be coordinated with the Director, Field Detachment, through Headquarters, DCAA.

(2) Transporting FOUO Information. Records containing FOUO information shall be transported in a manner that precludes disclosure of the contents. When not commingled with classified information, FOUO information may be sent via first-class mail or parcel post. Bulky shipments, such as distributions of FOUO Directives or testing materials, that otherwise qualify under postal regulations may be sent by fourth-class mail.

(3) Electrically Transmitted Messages. Each part of electrically transmitted messages containing FOUO information shall be marked appropriately. Unclassified messages containing FOUO information shall contain the abbreviation "FOUO" before the beginning of the text. Such messages shall be transmitted in accordance with communications security procedures in Allied Communication Publication 121 (U.S. Supp 1) for FOUO information.

(e) Safeguarding FOUO Information. (1) During Duty Hours. During normal working hours, records determined to be FOUO shall be placed in an out-of-sight location if the

work area is accessible to nongovernmental personnel.

(2) During Nonduty Hours. At the close of business, FOUO records shall be stored so as to preclude unauthorized access. Filing such material with other unclassified records in unlocked files or desks, etc., is adequate when normal U.S. Government or Government-contractor internal building security is provided during nonduty hours. When such internal security control is not exercised, locked buildings or rooms normally provide adequate after hours protection. If such protection is not considered adequate, FOUO material shall be stored in locked receptacles such as file cabinets, desks, or bookcases. FOUO records that are subject to the provisions of Public Law 86-36 shall meet the safeguards outlined for that group of records.

(3) Field audit offices located in contractor owned facilities will ensure that material marked FOUO is stored in a locked receptacle to which the contractor does not have access during nonduty hours.

(f) Termination, Disposal and Unauthorized Disclosures. (1) Termination. The originator or other competent authority, e.g., initial denial and appellate authorities, shall terminate "For Official Use Only" markings or status when circumstances indicate that the information no longer requires protection from public disclosure. When FOUO status is terminated, all known holders shall be notified, to the extent practical. Upon notification, holders shall efface or remove the "For Official Use Only" markings, but records in file or storage need not be retrieved solely for that purpose.

(2) Disposal. (i) Nonrecord copies of FOUO materials may be destroyed by tearing each copy into pieces to preclude reconstructing, and placing them in regular trash containers. When local circumstances or experience indicates that this destruction method is not sufficiently protective of FOUO information, local authorities may direct other methods but must give due consideration to the additional expense balanced against the degree of sensitivity of the type of FOUO information contained in the records.

(ii) Record copies of FOUO documents shall be disposed of in accordance with the disposal standards established under 44 U.S.C. chapter 33, as implemented by DCAAM 5015.15, "Files Maintenance and Disposition Manual".

(3) Unauthorized Disclosure. The unauthorized disclosure of FOUO records does not constitute an unauthorized disclosure of DoD information classified for security purposes. Appropriate administrative action shall be taken, however, to fix responsibility for unauthorized disclosure whenever feasible, and appropriate disciplinary action shall be

³See footnote 1 to paragraph (b)(3).

⁴See footnote 1 to paragraph (b)(3).

⁵See footnote 2 to paragraph (c)(2).

taken against those responsible. Unauthorized disclosure of FOUO information that is protected by the Privacy Act may also result in civil and criminal sanctions against responsible persons. The DCAA organizational element or DoD component that originated the FOUO information shall be informed of its unauthorized disclosure.

(g) Protection of Field Detachment Sensitive Information. (1) Definition. All communication, which qualifies for withholding under Exemptions (2) through (9), between regular DCAA organizational elements and Field Detachment offices is sensitive information and, as a minimum, shall be marked: FOR OFFICIAL USE ONLY (FOUO).

(2) Markings. (i) Communications, which qualify for withholding under Exemptions (2) through (9) initiated by a Field Detachment office, will bear the following marking:

FOR OFFICIAL USE ONLY

Access limited to addressee and his/her designated representative(s) with a need-to-know.

This document may not be reproduced or further disseminated without the approval of the Director, Field Detachment, DCAA.

(ii) All correspondence specifically exempt under Exemptions (2) through (9), including assist audit requests, generated by a regular (non-FD) DCAA office, which is addressed to the Field Detachment, either Headquarters or a field audit office, will be marked FOR OFFICIAL USE ONLY and will be limited within the FAO to one protected office copy.

(3) Storage. (i) All Field Detachment sensitive information in the possession of a regular DCAA office will be stored in a classified container, if available. If a classified container is not available, the sensitive information shall be stored in a locked container controlled by the FAO manager.

(ii) Permanent files currently maintained by regular DCAA offices, which are available to all FAO personnel, should not contain any detailed information on Field Detachment audit interest. That information shall be protected as sensitive information and stored in accordance with paragraph (g)(3)(i) of this appendix.

(4) Dissemination. (i) Access to Field Detachment sensitive information by other DCAA audit and administrative personnel within the office shall be on a strict need-to-know basis as determined by the FAO manager.

(ii) Requests by non-DCAA personnel for access to Field Detachment sensitive information must be coordinated with the Director, Field Detachment, through Headquarters, DCAA.

[56 FR 49685, Oct. 1, 1991, as amended at 60 FR 18006, Apr. 10, 1995; 60 FR 35699, July 11, 1995]

APPENDIX D TO PART 290—AUDIT
WORKING PAPERS

(a) *Definition*

(1) Audit working papers contain information from accounting and statistical records, personal observations, the results of interviews and inquiries, and other available sources. Audit working papers may also include contract briefs, copies of correspondence, excerpts from corporate minutes, organization charts, copies of written policies and procedures, and other substantiating documentation. The extent and arrangement of working paper files will depend to a large measure on the nature of the audit assignment.

(2) Working papers are generally classified in two categories: the permanent file and the current file.

(i) Permanent file.

(A) The permanent file on each contractor is a central repository of information gathered during the course of an audit which has continuing value and use to subsequent audits expected to be performed at the same contractor. Permanent files are useful in preparing the audit program and in determining the appropriate scope of subsequent audits. They also provide ready means for auditors to become familiar with the contractor's operations and any existing audit problems or contractor system weaknesses. While summary information on the contractor's organization, financial structure and policies may sometimes be included in permanent files for smaller contractors, such information on large contractors with continuing audit activity is generally maintained in the field audit office at the central reference library.

(B) Items which would logically be included in the permanent file as having continuing value in future audit assignments include:

(1) Internal control questionnaire.

(2) Internal control review update control log.

(3) Vulnerability assessment.

(4) MAARs control log.

(5) Disclosure statement and revisions in accordance with CAS rules and regulations, and

(6) CAS compliance control schedules and a noncompliance summary schedule.

(ii) Current File. The current file usually consists of working papers which have limited use on future assignments. DCAA Forms 7640-19 a, b, and c are the Agencywide Working Paper Indexes and provide a concise summary of items generally found in audit working papers.

(b) *Explanation*

(1) The preparation of working papers assists the auditor in accomplishing the objectives of an audit assignment. Working papers serve as the basis for the conclusions in the

audit report; provide a record of the work done for use as substantiating data in negotiations, appeals, and litigation; provide guidance for subsequent examinations; and serve as a basis for the review and evaluation of the work performed.

(2) Audit working papers are generally prepared at the time audit work is performed and are maintained on a current basis. Working papers normally reflect the progress of the audit and are designed to ensure continuity of the audit effort.

(3) Working papers should be relevant to the audit assignment and not include extraneous pages. Superseded working papers should be clearly marked as such and retained as part of the working paper package.

(4) The nature of audit working papers requires that proper control and adequate safeguards be maintained at all times. Working papers frequently reflect information considered confidential by the contractor and are marked "For Official Use Only" or are classified for government security purposes.

[56 FR 56932, Nov. 7, 1991]

PART 291—DEFENSE NUCLEAR AGENCY (DNA) FREEDOM OF INFORMATION ACT PROGRAM

Sec.

- 291.1 Purpose.
- 291.2 Applicability.
- 291.3 Definitions.
- 291.4 Policy.
- 291.5 Responsibilities.
- 291.6 Procedures.
- 291.7 Administrative instruction.
- 291.8 Exemptions.
- 291.9 For official use only (FOUO).

APPENDIX A TO PART 291—FREEDOM OF INFORMATION ACT REQUEST (DNA FORM 524)

AUTHORITY: 5 U.S.C. 552.

SOURCE: 56 FR 9842, Mar. 8, 1991, unless otherwise noted.

§ 291.1 Purpose.

This part establishes policies and procedures for the DNA FOIA program.

§ 291.2 Applicability.

This part applies to Headquarters, Defense Nuclear Agency (HQ, DNA), Field Command, Defense Nuclear Agency (FCDNA), and the Armed Forces Radiobiology Research Institute (AFRRI).

§ 291.3 Definitions.

(a) *FOIA Request.* A written request for DNA records made by any person,

including a member of the public (U.S. or foreign citizen), an organization, or a business, but not including a Federal agency or a fugitive from the law that either explicitly or implicitly invokes the FOIA (5 U.S.C. 552), 32 CFR part 285, 286, or this part.

(b) *Agency record.* (1) The products of data compilation, such as all books, papers, maps, and photographs, machine readable materials or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law in connection with the transaction of public business and in DNA's possession and control at the time the FOIA request is made.

(2) The following are not included within the definition of the word *record*:

(i) Objects or articles, such as structures, furniture, vehicles and equipment, whatever their historical value, or value as evidence.

(ii) Administrative tools by which records are created, stored, and retrieved, if not created or used as sources of information about organizations, policies, functions, decisions, or procedures of a DNA organization. Normally, computer software, including source code, object code, and listings of source and object codes, regardless of medium are not agency records. (This does not include the underlying data which is processed and produced by such software and which may in some instances be stored with the software.) Exceptions to this position are outlined in paragraph (b)(3) of this section.

(iii) Anything that is not a tangible or documentary record, such as an individual's memory or oral communication.

(iv) Personal records of an individual not subject to agency creation or retention requirements, created and maintained primarily for the convenience of an agency employee, and not distributed to other agency employees for their official use.

(v) Information stored within a computer for which there is no existing computer program for retrieval of the requested information.

(3) In some instances, computer software may have to be treated as an